

## CHAPTER 16.1-12

### CERTIFICATES OF NOMINATION - VACANCIES

**16.1-12-01. Certificate of nomination - Party and independent.** A certificate of nomination must be either:

1. The certificate of nomination required to be executed by the state or a county canvassing board pursuant to sections 16.1-15-40 and 16.1-15-21, respectively, for party nominations.
2. The certificate of nomination by petition for independent nominations provided for by this chapter.

**16.1-12-02. Certificates of nomination by petition - Form and contents.** Certificates of nomination for nominees for an office to be filled at a general or special election, except for an office appearing on the no-party ballot, may be made as provided by this section. Except for nominees for president of the United States, names of nominees so nominated must appear on the ballot as independent nominations. The names of nominees for president of the United States may appear on the ballot with a designation, not to exceed five words, that names the organization or political party to which the presidential candidate affiliates. The designation may not falsely indicate an affiliation with or the support of any political party organized in accordance with this title or include any substantive word or phrase that is profane or that is already included in or resembles the name of a political party entitled to a separate column under section 16.1-11-30. Each certificate of nomination by petition must meet the specifications for nominating petitions set forth in section 16.1-11-16. The signatures on the petition must be in the following number:

1. Except as provided in subsection 3, if the nomination is for an office to be filled by the qualified electors of the entire state, there must be no fewer than one thousand signatures.
2. If the nomination is for an office to be filled by the qualified electors of a district less than the entire state, the number of signatures must be at least two percent of the resident population of the district as determined by the most recent federal decennial census, but in no case may more than three hundred signatures be required.
3. If the nomination is for the office of president, there must be no fewer than four thousand signatures.
4. If the petition is for the office of governor or lieutenant governor, it must contain the names and other required information of candidates for both those offices.

**16.1-12-02.1. Applicant's name placed upon ballot - Affidavit to accompany petition.** Upon receipt by the secretary of state of the certificate of nomination provided for in section 16.1-12-02 accompanied by the following affidavit, the secretary of state shall place the applicant's name upon the general election ballot. The affidavit must be substantially as follows:

[illegible]

I, \_\_\_\_\_, being sworn, say that I reside at \_\_\_\_\_, in the city of \_\_\_\_\_, state of North Dakota; that I am a candidate for nomination to the office of \_\_\_\_\_ to be chosen at the general election to be held on \_\_\_\_\_, \_\_\_\_\_, and I request that my name be printed upon the general election ballot as provided by law.

Date \_\_\_\_\_

Candidate's signature \_\_\_\_\_

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_.

NOTARY SEAL

**16.1-12-02.2. Counting of write-in votes - Certificate of candidacy by write-in candidates.**

1. An election board or canvassing board may not count or be required to officially report any write-in vote for any:
  - a. Person who is required to file a certificate of write-in candidacy under this section but who has not filed a certificate of candidacy and been certified as a write-in candidate.
  - b. Fictitious person, nonperson, or person clearly not eligible to qualify for the office for which the vote was cast.
  - c. Statement concerning the candidates.
  - d. Name written or printed by the voter for an office that did not also include the darkening of the oval next to the write-in line, except that a write-in candidate for a nonfederal office may make a timely written demand to a county canvassing board to identify and preserve any write-in vote cast for the office sought by the write-in candidate for canvass by the board. The candidate shall deliver the demand to the county auditor and a copy to the clerk of district court no later than thirty-six hours before the time the county canvassing board is scheduled to meet. A demand only may be made if the unofficial election results maintained by the county auditor demonstrate that the write-in candidate's known vote total is within the pertinent percentage limits provided in subsection 1 or 2 of section 16.1-16-01 and a statement to that effect is included in the demand. After delivery of the ballots as provided by section 16.1-15-08, the canvassing board shall review the ballots to identify any ballot that contains a write-in vote. The county canvassing board shall tally and canvass any write-in vote in the same manner as lawful or qualifying write-in votes if the canvassing board is able to clearly ascertain the intent of the voter from examining the ballot because the write-in candidate's name has been written on the ballot opposite the office to be voted for or because of any other cogent evidence of intent.
  - e. Write-in votes which constitute five percent or less of the votes cast by the voters for the candidate receiving the most votes for that office, except in the case of a primary election where enough votes were cast as write-in votes to qualify a name for the general election ballot. This percentage is to be calculated based on the total number of write-in votes tabulated by the voting equipment in the precincts of the county in which that office was on the ballot.
  - f. Write-in votes that do not need to be individually canvassed based on the requirements of this subsection must be listed on the county canvass report as "scattered write-ins".
2. A person who intends to be a write-in candidate for president of the United States at the presidential preference contest or for statewide or judicial district office at any election shall file a certificate of write-in candidacy with the secretary of state by four p.m. on the twenty-first day before the contest or election. The certificate must contain the name and address of the candidate and be signed by the candidate. Before the thirteenth day before the contest or election, the secretary of state shall certify the names of the candidates to each county auditor as write-in candidates.

3. A person who intends to be a write-in candidate at the general election for president of the United States shall file a certificate of write-in candidacy with the secretary of state by four p.m. on the twenty-first day before the general election. The certificate must contain the names and addresses of the candidates for presidential electors for that presidential candidate and a certification of acceptance signed by each candidate for elector. The candidate shall sign the certificate. The certificate may also include the name and address of a candidate for vice president of the United States and a certification of acceptance signed by that candidate. The secretary of state shall prescribe the form of the certificate of write-in candidacy and the certification of acceptance. Before the thirteenth day before the election, the secretary of state shall certify the names of the presidential candidates and the presidential electors to each county auditor as write-in candidates.
4. A person who intends to be a write-in candidate for any legislative district office shall file a certificate of write-in candidacy with the election officer with whom the candidate would otherwise file to have the candidate's name placed on the ballot. The certificate must contain the name, address, and signature of the candidate. Certificates must be filed by four p.m. on the fourth day before the election. When the candidate files a certificate, the candidate also shall file the contribution statement provided for under section 16.1-08.1-02 complete through the day of the filing of the certificate.
5. A certificate under this section is not required when:
  - a. No names will appear on the ballot for an office;
  - b. The number of candidates appearing on the ballot for an office is less than the number to be elected; or
  - c. The number of candidates appearing on the ballot for a party office is less than the number of nominations a party is entitled to make. When certificates of write-in candidacy are not required under this chapter, all write-in votes must be counted.

A person required to file a certificate of write-in candidacy may not seek more than one office appearing on the primary and general election ballots.

**16.1-12-02.3. Nominating petition for an independent candidate not to be circulated more than ninety days prior to filing time.** A petition provided for in this chapter may not be circulated or signed more than ninety days before the date when any petition must be filed under the provisions of this chapter. Any signatures to a petition obtained more than ninety days before that date may not be counted.

**16.1-12-03. Certificate of nomination to contain only one name - Person to participate in only one nomination - Exception.** No certificate of nomination provided for by this chapter, except in the case of presidential electors, may contain the name of more than one nominee for each office to be filled. A person elected or appointed to an office appearing on the no-party ballot or seeking nomination and election to a no-party office may also seek nomination to legislative office and may serve in the legislative assembly, unless the no-party office is the office of district court judge, or a statewide elective office. Except as may be permitted in this section, no person may participate directly or indirectly in the nomination of more than one person for each office to be filled on the general election ballot, except a person may sign a certificate of nomination by petition for more than one person for each office, and no person may accept a nomination to more than one office on the general election ballot. No political party is entitled to more than one set of nominees on the official general election ballot.

**16.1-12-04. Certificates of nomination - Time and place of filing.**

1. Certificates of nomination for nominees for offices to be filled by the qualified electors of the entire state must be filed with the secretary of state. Not less than fifty-five days before any general or special election to fill any statewide office, the secretary of state shall certify to each county auditor the names and addresses of the persons nominated for statewide office according to this chapter as shown on the certificates of nomination filed in the secretary of state's office.
2. Certificates of nomination for nominees for county offices and legislative offices must be filed with the county auditor of the county in which the candidate resides. The county auditor shall certify the names and addresses of legislative candidates filing certificates of nomination according to this chapter to the secretary of state. When a legislative district is composed of more than one county, the county auditor shall certify to the county auditors of the other counties comprising the legislative district the names and addresses of the candidates filing certificates of nomination.
3. Certificates of nomination must, without regard to the means of delivery, be filed and in the actual possession of the appropriate officer not later than four p.m. on the sixtieth day prior to the day of election.
4. The secretary of state and the county auditors shall keep on file for six months all certificates of nomination filed with them under this chapter and all certificates of nomination must be open to public inspection during regular business hours.

**16.1-12-05. Secretary of state to certify nominations to county auditor - Duty of county auditor.** Repealed by S.L. 1997, ch. 200, § 4.

**16.1-12-06. Person nominated by more than one party - Column in which name placed.** When one person has been nominated for the same office by more than one body of electors qualified to make nominations for public office, the nominee shall file with the proper officer designated in this chapter, on or before the last day fixed by law for filing certificates of nomination for the office, a signed statement designating the column on the official ballot in which the nominee desires the nominee's name to appear. The column so designated must be the column allotted to one of the bodies of electors by whom the person was nominated. In the absence of a timely written designation as provided by this section, the appropriate officer shall place the person's name in the column allotted to the body of electors from which was first received notice of the person's nomination.

**16.1-12-07. If nominee declines - Certificate void.** Any person intending to decline a nomination shall do so by filing written notice of that intention with the officer with whom the certificate nominating the person is filed. If the written notice is filed with the appropriate officer at least sixty days, and before four p.m. on the sixtieth day before the election, the nomination is void. If written notice is mailed, it must be in the physical possession of the appropriate officer before four p.m. on the sixtieth day before the election.

**16.1-12-08. Vacancy occurring on ballot before election day but after ballots are printed - Stickers used.** Repealed by S.L. 2001, ch. 203, § 9.

**16.1-12-09. Filling vacancy existing on no-party ballot - Petition required - Time of filing.** Whenever a vacancy exists on a no-party ballot for a state office or for judge of a district court, such vacancy may be filled by filing with the secretary of state, at least sixty days prior to the general election and before four p.m. on the sixtieth day, a written petition as provided in section 16.1-11-06, stating that the petitioner desires to become a candidate for election to the office for which a vacancy exists. If the petition is mailed, it must be in the physical possession of the secretary of state before four p.m. on the sixtieth day prior to the general election. The petition for the nomination of any person to fill such vacancy must be signed by qualified electors equal in number to at least two percent of the total vote cast for the office of governor in the state or district, at the most recent general election at which the office of governor was voted upon, but in no case may more than three hundred signatures be required.

Whenever a vacancy exists on a no-party ballot in a county or district within a county, the vacancy may be filled by filing with the county auditor at least sixty days prior to the general election and before four p.m. of the sixtieth day a written petition as provided in section 16.1-11-11, stating that the petitioner desires to become a candidate for election to the office for which a vacancy exists. If such petition is mailed or otherwise delivered, it must be in the possession of the county auditor before four p.m. on the sixtieth day prior to the general election. The petition for the nomination of any person to fill the vacancy must be signed by qualified electors equal in number to at least thirty percent of the total vote cast for the office of governor at the most recent general election in the county or district at which the office of governor was voted upon, but in no case may more than three hundred signatures be required.

A vacancy in the no-party ballot must be deemed to exist when:

1. A candidate nominated at the primary election dies, resigns, or otherwise becomes disqualified to have the candidate's name printed on the ballot at the general election.
2. No candidates were nominated at the primary election because the office did not yet exist.
3. The timing of the vacancy in an office makes it impossible to have it placed on the primary ballot.